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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SHOW CAUSE NOTICE NO. 3 OF 2006

IN

COMPANY PETITION NO. 224 OF 1999

In the matter of Companies Act, 1956

AND

In the matter of M/s. Maneesha
Instruments P.ltd (In Liqn.)

M.R. Kalburgi Contemnor

Mr. L.R. Castelino for the Noticee.

Mr.S.C. Gupta, Official Liquidator present.

CORAM: S.C. DHARMADHIKARI, J.

DATED: 31ST MARCH, 2006.

P.C. :

1. On 28.10.2005 this court passed the following order :

"1. Perused the report of the Official Liquidator dated 28.10.2005. Before passing the final order on this report, in my opinion, it is necessary

to give information to the Prototype Engineering who have undertaken the valuation work in terms of the order passed by this court on the earlier occasion. The copy of the report submitted by the Official Liquidator be made available to M/s. Prototype Engineering alongwith all the relevant record as and when demanded so as to enable them to file its reply to the present report and show cause notice. Appropriate action will be taken against them as may be advised and permissible by law. Notice returnable on 23.12.2005. Till appropriate orders are passed on this report, no matter be marked to M/s. Prototype Engineering unless contrary order is passed by the court to that effect.

2. Pursuant thereto a show cause notice was issued to Mr. M.R. Kalburgi to show cause as to why action should not be taken against him for making a report to this court with regard to the properties referred to more particularly in the report of the Official Liquidator dated 28.10.2005.

3. The Official Liquidator has invited the court's attention to the fact that with the permission of this court the panel valuer Mr. M.R. Kalburgi was appointed to value the assets

of the company. His valuation report indicates a vast difference in the rates prevailing as per MIDC. The Official Liquidator makes the aforesaid statement in his report after referring to the documents forwarded by MIDC.

4. The Show Cause notice was issued after perusing this report of the Official Liquidator.

5. The explanation of the noticee on affidavit is that the report of the Official Liquidator is incorrect because the figures are not forwarded by MIDC to the ex-directors of the company in liquidation.

6. However in para 4 of his affidavit the valuer admits that the rate at best can be at Rs.1500/-. He blames the Official Liquidator for not taking adequate care while submitting the report. Thus in turn, he blames the court for issuing a show cause notice to him. I have perused the report of the Official Liquidator dated 28.10.2005 in the light of his affidavit

which is filed in this court on 9.3.2006.

7. I reproduce for the sake of reference the para nos.4 and 5 of his affidavit :

"4. I further respectfully say that assuming without admitting the rate of M.I.D.C. as mentioned in the report a para.5 is @ 1500 it can be best said that the said rates might be for the purpose of calculation of stamp duty as a revenue to the State Government or in the alternative the said rates offered to the public at large for sale. I therefore say that the same cannot be construed as Market Value of the said immovable property. The learned Official Liquidation ought to have been taken due care while submitting the report to his Hon'ble Court and omission in this respect has resulted into issuance of instant show cause notice to the deponent herein which has further resulted into mental disturbance to the deponent.

5. I further say that at the time of valuation I personally visited and enquired in the whole area of the M.I.D.C. and found that more than 50% plots earlier allotted by the M.I.D.C. were offered for resale by the said lessee @ Rs.600/- to Rs.800/- per square meter, for open plot due to decline in Industrialization. I therefore say that the valuation of immovable properties in question is being valued as per the economic condition of the vicinity and also market conditions including demand and supply of similar properties. I further say that as mentioned above, numbers of plots were offered for

re-sale and the variance of market value is between Rs. 600/- to Rs.800/- per square meter and therefore I valued the said immovable property Rs.700/- per square meter, which is true and correct at that point of time.

8. The perusal of these paragraphs would indicate that he has justified his valuation. After this was brought to the notice of the advocate who is appearing for the noticee he has filed an additional affidavit and the same reads as under :

"1. I say that I am making this Additional Affidavit for the limited purpose to bring it on record of this Hon'ble Court that in respect of valuation done by me is correct as mentioned in my earlier affidavit. However I could not substantiate it with documentary proof and therefore I am tendering my unconditional apology to this Hon'ble Court for the inadvertent mistake on my part by not incorporating the details in the valuation report with documentary evidence.

9. Learned counsel appearing for the valuer states that he tenders an unconditional apology for filing and forwarding the valuation report which is totally unsubstantiated by any

documentary proof. He submits that this was a mistake and this being the first case of this nature a lenient view may be taken. The valuer tenders an unconditional apology to this court.

10. In my view, the conduct of the valuer to say the least, is irresponsible. He should have submitted the valuation Report to the Official Liquidator knowing fully well that his assistance is sought to value the assets and properties of the company in liquidation. Such valuation is sought so that the assets and properties fetch the best possible price and from the proceeds the liabilities including those of secured creditors and workers are discharged, at least, substantially. A person working as a valuer on the panel of the liquidator ought to be aware of such a duty and responsibility. He performs a public duty and therefore has to act in public interest and also assist the court. In my view, the noticee does not deserve to be continued as valuer on the panel of the Official Liquidator in the light of

his irresponsible conduct in this matter. Since he has tendered an unconditional apology I drop further proceedings against him. However, I direct the Official Liquidator to remove the name of the valuer Mr. M.R. Kalburgi from his panel forthwith. I also direct the copy of this order be forwarded to the Institution of Engineers for India, Society of Engineers, 12, B-Ground Floor, Netaji Subhash Road, Kolkata-700 001 which according to the noticee grants him the necessary qualification and degree on the strength of which he works as a valuer and undertakes jobs of valuation of properties. It is for that authority to take appropriate action in accordance with law. Notice discharged. The valuer concerned to pay cost quantified at Rs.5,000/- to the Maharashtra State Legal Services Authority.
